

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMNRITSAR BENCH, AMRITSAR
BEFORE SHRI N.K. CHOUDHRY, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.28/ASR/2017

निर्धारणवर्ष/A.Y.:2003-04

Shri Rajinder Kumar Chadha, K/105, Dera Baba Jaimal Singh, Beas	Vs.	Income Tax Officer, Ward-4(3) Amritsar
PAN:ABIPC 5206 H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Shri Padam Bahl, CA
राजस्वकीओरसे /Revenue by	Shri Charan Dass, Sr. D.R.

सुनवाईकीतारीख/ Date of hearing:	19.12.2019
उद्घोषणाकीतारीख/Pronouncement on:	19.12.2019

आदेश /O R D E R

PER O. P. MEENA, ACCOUTANT MEMBER:

1. This appeal by the Assessee is directed against the order of learned Commissioner of Income tax (Appeals)-2, Amritsar (in short “the CIT (A)”) dated 18.10.2016 pertaining to Assessment Year 2003-04, which in turn has arisen from the assessment order passed under section 143 (3)read with section 254 dated 26.03.2015 of Income Tax Act,1961 (in short ‘the Act’) by the Income Tax Officer- Ward-4(3) Amritsar, (in short “the AO”).
2. Ground No.1 is against the issue of notice under section 148 of the Act that the notice is void-ab-initio.

3. We have perused the relevant material on record. We find that the impugned assessment order was passed in while giving appeal effect to the order of I.T.A.T. Amritsar. The learned Counsel for the assessee has also not made any argument on this ground before us. Therefore, this ground of appeal is dismissed.

4. Ground No. 2 to 4 are against the addition of Rs.12,21,940 on account of long-term capital gain on sale of properties.

5. Succinct facts are that the assessee has filed return of income on 10.07.2003 declaring total income of Rs. 2,22,940. The assessment was reopened under section 148 vide notice dated 22.03.2010. The assessment was made under section 143 (3) read with section 147 on 13.11.2002 by determining long-term capital gain on sale of two properties at Rs. 12,64,416. The assessee carried the matter in appeal before CIT (A). However, CIT (A) has confirmed the addition so made. Then the assessee filed an appeal before tribunal. The ITAT, Amritsar vide its order dated 20.05.2013 [ITA No.419/ASR/2012] directed the AO to refer the matter to the valuation cell of the Department and decide the issue afresh. Accordingly, the AO referred the two impugned properties for valuation to the Valuation officer namely (i) property No.113/72, Swroop Nagar, Kanpur, (ii) 113/73, Swroop Nagar Kanpur. The Valuation Officer had estimated value of property No. 113/72 at Rs. 67,92,350 as on 13.11.2002 as against the declared sale value at Rs.50,90,000 as per sale deed and property No 113/73 at Rs.

30,95,650 as against declared sale value at Rs. 28,00,000. Thus, the AO has worked out difference of Rs. 19,98,000 $[(67,92,350 + 30,95,650) - (50,90,000 + 28,00,000)]$ and made addition at Rs. 9,99,000 being 50% share of the assessee in property sold. That the assessee has claimed before the AO that the valuation officer has adopted the land and building method for estimating the valuation of the property. Whereas in the case of properties were in possession of tenants for the last more than 30 years and has to be sold to them. The matter for valuation of the properties should have been adopted as Rent Capitalization Method. It was further contended that the Valuation Officer has provided depreciation 90% of cost as against 95% of cost and has taken the life of the building is 70 years instead of 60 years. The assessee further contended that the Rent Capitalization Method was accepted by the Legislature by in enacting Rule 1BB (operative up to 31. 03. 1989) and Rule 3 of Schedule III of Wealth Tax Act (after 01.04.1989). The assessee has also placed reliance on various case laws as quoted by the AO at Page No.3 of assessment order. However, the AO observed that the Rent Capitalization Method is applicable to wealth tax purpose only. The assessee has not given the basis as to why depreciation should be allowed @ 95% and not been able to furnish evidence that life of property should be 60 years.

6. Being, aggrieved, the assessee filed an appeal before the Ld. CIT (A). Wherein it was contended that the properties sold were

tenanted properties for last 30 years and same were sold to them only as is where basis and were subject to Rent Control Act. Therefore, only method, which could be applied, is Rent Capitalization Method. The assessee has also relied on number of case laws. However, the CIT (A) observed that the fact of tenanted properties should have been brought to notice of VO who could have considered the same. Hence, argument of the assessee was dismissed. The next argument of the assessee that 95% depreciation should have been provided to cost and life of property should have been taken 60 years was not found acceptable to CIT (A). Accordingly, addition made by the AO was confirmed.

7. Being, aggrieved the assessee filed this appeal before the Tribunal. The learned counsel for the assessee submitted that the properties were in possessions of tenants and sold to the tenants on "as is where basis". The valuation of property should have been made by applying Rent Capitalization Method. Learned Counsel referred the provision of section 50C (2) which specifically provides that where reference is made by the AO to Valuation Officer the provisions of section 16A (2), (3), (4) (5) of Wealth Tax Act would apply in the same manner as they apply to valuation referred under Wealth Tax Act. The Rule 3 of Schedule III of Wealth Tax Rules specifically provide for method of valuation of rented building as Rent Capitalization Method. The submissions of Valuation Officer that Directorate of Income tax

issued guidelines, however same cannot be overruled out the provisions of the Act. The learned counsel for the assessee further supported his view by placing reliance in the case of CIT v. Pramod Chand Soni 100 CCH 0333 (Raj.), Waqf Alal Aulad v. Addl. CIT 28 CCH 0712 (Delhi-Trib) and plethora of decision as per his case laws book which were also quoted by the AO in his assessment order. It was further contended that CPWD rate are applicable in New Delhi which are 30% to 40% higher than the PWD rates, which are applicable in respective states. The valuation should therefore, Sandharbh Mall made by applying PWD rates only. It was further submitted the life of first class building is taken for 60 years only. It was therefore, argued that depreciation to cost may be computed by taking the life of the building as 60 years and not as 70 as provided in Schedule II of Companies Act, 2013 and 95% cost be allowed. The learned counsel for the assessee further submitted that the assessee has sold similar properties in assessment year 2004-05 where also provisions of section 50C were invoked and was in successful in appeal before CIT (A) on the ground that that the properties were tenanted properties and were in possession of tenants and were sold as is where basis to tenants in possession. The CIT (A) held that Land & Building Method could not be applied and only Rent Capitalization Method could be applied. The facts of assessment year 2003-04 are identical.

8. The learned D.R. supported the orders of lower authorities. However, it was contended that section 50C reference is applicable for made is for valuation of income-tax purpose and it is not applicable to and provisions of section 16A of Wealth Tax Act are not applicable.

9. We have heard the rival submissions and perused the relevant material on record. We find that Section 50C (2) of the Act provides that where the consideration received or accrued as a result of the transfer by an assessee of a capital assets, being land or building or both, is less than the value adopted by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, then the value so adopted would be deemed to be full value of the consideration received or accruing, as a result of such transfer, for computing capital gain/loss of the assessee. However, the assessee may dispute the adoption of such value and in that case, a reference would be made to VO as per sub-section (2) of section 50C. In the present case, according to section 50C, the reference to VO was made at the instance of Tribunal. The two properties in question were valued on the basis Land & Building Method. However, we notice that the properties in question were tenanted properties and were in possession of the tenants and these were sold to tenants “as is where basis” Therefore the tenants are protected by the Rent Restriction Act of the State Government. They cannot be ejected. One

may has to see whether a property giving an income of Rs. 19,000 and Rs. 7000 per annum can fetch the value of more than Rs.67 Lakh and Rs. 30 lakhs respectively. Can any prudent businessperson would like to make investment in such a venture or one would go to purchase such property only for pride of possession. We find that the provision of section 50C (2) which specifically provides that where reference is made by the AO to Valuation Officer the provisions of section 16A (2), (3), (4) (5) of Wealth Tax Act would apply in the same manner as they apply to valuation referred under Wealth Tax Act. The Rule 3 of Schedule III of Wealth Tax Rules specifically provide for method of valuation of rented building as Rent Capitalization Method. The VO has only stated that it has been valued as per guidelines of Board. However, when there is specific provisions in the Act and Which provides valuation as per Rent Capitalization Method. In the case of tenanted properties. The learned counsel for the assessee further, placed reliance in the case of held that CIT v. Pramod Chand Soni 100 CCH 0333 (Raj.) and Waqf Alal Aulad v. Addl. CIT 28 CCH 0712 (Delhi-Trib). Which also supported the case of the assessee. The Hon`ble Rajasthan High Court in the case of CIT v. Pramod Chand Soni 100 CCH 0333 (Raj.) held that where properties are rented for more than 50 years and was in possession of tenants at the time of execution of sale deed hence, it could be reasonably inferred that such property could not fetch prevalent market rate as compared to other properties.

Similarly in the case of Ramendra Vikram Singh v. ITO 36 DTR (luck) (Trib) 129 it was held that DVO report under section 50C (2) is binding on the AO and it was also held that Section 16A of Wealth Tax Act read with Rule and Schedule III of Wealth Tax Act are applicable to the valuation made under section 50C of the Act. Similar findings were given by the Hon`ble Punjab & Haryana High Court in the case of CIT v. Prem Nath Anand 108 ITR 549 (P&H). On careful consideration of facts and circumstances and taking into consideration the cumulative effect of all the circumstances, we are of the considered view that the VO should have determined the valuation of properties by taking Rent Capitalization Method. We further, note that the VO had applied CPWD rate whereas he should have applied PWD rates and should have allowed depreciation @95% of cost taking the life of properties at 60 years. The AO is therefore, directed to consider value of property as per Rent Capitalization Method and compute capital gains accordingly. These grounds of appeal are therefore, allowed in favour of the assessee.

10. In the result, the appeal of the assessee is partly allowed.

11. The order pronounced in the open Court on 19.12.2019

Sd/-
(N.K.CHOUDHRY)
JUDICIAL MEMBER

Sd/-
(O.P.MEENA)
ACCOUNTANT MEMBER

Amritsar: Dated: December 19, 2019/opm

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/
Guard file of ITAT.

By order

Assistant Registrar